MR.RAFAEL JASSO.
NAME

H.86397.
PRISON NUMBER

R.J.DONOVAN.CORR.FACILITY.
CURRENT ADDRESS OR PLACE OF CONFINEMENT

SANDIEGO,CALIFORNIA.92179 9001.
CITY, STATE, ZIP CODE

2254 1983
FILING FEE PAID
Yes No ✓
IFP MOTION FILED
Yes ✓ No
COPIES SENT TO
Court ✓ ProSe

FILED
JUN 20 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [signature] DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 1137 LAB PCL

RAFAEL JASSO.,
(FULL NAME OF PETITIONER)

PETITIONER

v.

ROBERT J. HERNANDEZ.,
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

______________________,

The Attorney General of the State of California, Additional Respondent.

Civil No. ______________________
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: SANDIEGO,COUNTY SUPERIOR COURT. P.O.BOX 122724.S.D.CA.92112/2724.

2. Date of judgment of conviction: 2004.

3. Trial court case number of the judgment of conviction being challenged: CASE NO. SCS 176657.

4. Length of sentence: 35 to Life.

CR

5. Sentence start date and projected release date: 2004 to 2035.

6. Offense(s) for which you were convicted or pleaded guilty (all counts):
667.5(A) 667(A) 667(A)(I) 667(B)(I)

7. What was your plea? (CHECK ONE)
   (a) Not guilty ☒
   (b) Guilty ☐
   (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
   (a) Jury ☒
   (b) Judge only ☐

9. Did you testify at the trial?
☐ Yes ☒ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
☒ Yes ☐ No

11. If you appealed in the California Court of Appeal, answer the following:
   (a) Result: DENIAL.
   (b) Date of result, case number and citation, if known: 08/0548 JAH (LSP)
   (c) Grounds raised on direct appeal: Ineffective Assistance of Counsel.

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:
   (a) Result: DENIAL.
   (b) Date of result, case number and citation, if known: 08/0548 JAH (LSP)
   (c) Grounds raised: Ineffectiveness of Counsel.

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

(a) Result: None.....

(b) Date of result, case number and citation, if known: None...

(c) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?
☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: 08/0548/JAH(LSP).

(b) Nature of proceeding: DENIAL....

(c) Grounds raised: INEFFECTIVENESS OF COUNSEL.......

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result:

(f) Date of result:

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?
☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

(a) California Court of Appeal Case Number: None.....

(b) Nature of proceeding: ______

(c) Grounds raised: NOne.....

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result: ______

(f) Date of result: ______

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?
☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

(a) California Supreme Court Case Number: NONE.......

(b) Nature of proceeding: ______

(c) Grounds raised: ______

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result: ______

(f) Date of result: ______

20. If you did ***not*** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

PETITIONER IS INCOMPETENT,CAN BARELY READ OR WRITE.

CURRENTLY E.O.P.TAKING SEVERAL PHYCOTROPICAL MEDICATIONS.

INDIGENT AND PETITIONER IS PRO PER.

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? ______

(i) What was the prior case number? ______

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: ______

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

CAUTION:

- Exhaustion of State Court Remedies: In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present ***all*** other grounds to the California Supreme Court before raising them in your federal Petition.
- Single Petition: If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- Factual Specificity: You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE**: CONFLICT OF INTREST.

Supporting FACTS (state *briefly* without citing cases or law)

I was unable to help my lawyer during my trial because I was taking several phycotropical medication's before and during my trial. I can't even remember what went on or what happened at my trial. My lawyer never even told me what was going on. HE SAID I WAS GETING "6" YEAR'S. Then I get to prison and they tell me I got 35 to Life. Also they did not notify me about my appeal....

My claim's are "potentially meritorious" because they raise claim's based on the violation of my right's under the U.S. Constitution, and because the fact's I have alleged in the petition,if taken as true,are sufficient to merit relief. Any delay in exhausting my claim is solely the result of the fact's I have alleged in my declaration,and not the result of any dilatory litigation tactic's.

RHINES v. WEBER,124 S.CT. 1528(2005).

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

(b) **GROUND TWO**:

Supporting FACTS (state *briefly* without citing cases or law):

Ineffectiveness of Counsel....

My lawyer never even talked to me to let me know that I was facing a life sentence. They never considered my mental illness either.

The trial court misapplication of state sentencing rule's rose to the level of a constitutional violation. SEE ESTELLE v. MCGUIRE, 502 U.S. 62,67/68(1991). The state courts misapplication of its own sentencing laws was so unfair that they violated my due process. CHRISTIAN v. RHODE, 41 F.3d 461;469(9th CIR.1994).......

I feel that my sentence is arbitrary and capricious such that due process was violated. The state trial court did violate federal law or it's misapplication of state sentencing laws rises to the level of federal constitutional significance........

Did you raise GROUND TWO in the California Supreme Court?

☒ Yes ☐ No.

(c) **GROUND THREE**: Ineffectiveness of Counsel.......

Supporting FACTS (state *briefly* without citing cases or law):

The principle's governing ineffectiveness claim's should apply in Federal colateral procedding'sas they do on direct appeal or in motion's for a new trial. As indicated by the "cause and prejudice" test for over coming procedural waiver's of claim's of error,the presumption that a criminal judgement is final is at it's strongest in collateral attack's on that judgement.

SEE UNITED STATE'S v. FRADY,456 U.S.152,162/169,102 S.CT.1584, 1570/1572,71 L.ED.2nd 783(1982).

An ineffectiveness claim,however, as our articulation of the standard's that govern decision of such claim's make's clear is an attack on the fundemental fairness of the procedding's whose result is challenged. Since fundamental fairness is the central concern of the Writ of Habeas Corpus,seeID,at 126, 102 S.CT.,at 1570,no special standard's ought to apply to ineffectiveness claim's made in Habeas proceeding's..

Did you raise GROUND THREE in the California Supreme Court?

x☒ Yes ☐ No.

(d) GROUND FOUR:

NONE...........

Supporting FACTS (state *briefly* without citing cases or law):

NONE...........

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?
☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:
(a) Name of Court: ______
(b) Case Number: ______
(c) Date action filed: ______
(d) Nature of proceeding: ______
(e) Grounds raised: ______
(f) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
(a) At preliminary hearing: ______
(b) At arraignment and plea: ______
(c) At trial: KORYN and KORYN..
5105 Cass Street. Sandiego,Calif. 92109.
(d) At sentencing: ______
(e) On appeal: KORYN and KORYN..
(f) In any post-conviction proceeding: ______
(g) On appeal from any adverse ruling in a post-conviction proceeding: NONE..

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

____

(b) Give date and length of the future sentence: ______________________________

____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: ________
5/12/08.

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

____

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5/12/08/. ______________________________

(DATE) SIGNATURE OF PETITIONER

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILING FEE PAID Yes No ✓
IFP MOTION FILED Yes ✓ No
COPIES SENT TO Court ✓ ProSe

FILED JUN 2 0 2008 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY KM DEPUTY

I (a) PLAINTIFFS

Rafael Jasso

DEFENDANTS

Robert J. Hernandez

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Rafael Jasso
PO Box 799001
San Diego, CA 92179
H-86397

ATTORNEYS (IF KNOWN)

'08 CV 1137 LAB PCL

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1U.S. Government Plaintiff
- ☒ 3Federal Question (U.S. Government Not a Party)
- ☐ 2U.S. Government Defendant
- ☐ 4Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Eiectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury- Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☒ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND $ Check YES only if demanded in complaint: JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE 6/20/2008 ~~SIGNATURE OF ATTORNEY OF RECORD~~

RMuller

CR